

## Message Text

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ACTION ARA-10

INFO OCT-01 ISO-00 SP-02 AID-05 EB-07 NSC-05 CIEP-01

TRSE-00 SS-15 STR-04 OMB-01 CEA-01 CIAE-00 COME-00

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SIL-01 L-03 PA-01 PRS-01 /083 W  
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R 192009Z JAN 76

FM AMEMBASSY SANTIAGO

TO SECSTATE WASHDC 6680

C O N F I D E N T I A L SECTION 1 OF 2 SANTIAGO 0438

EO 11652: GDS

TAGS: EFIN, EINV, CI, US

SUBJECT: INVESTMENT INCENTIVE AGREEMENT BETWEEN CHILE AND OPIC

1. SUMMARY: WE HAVE NOW SUCCEEDED, AFTER FAIRLY ARDUOUS NEGOTIATIONS, IN PRODUCING A MUTUALLY AGREEABLE FORMULA UNDER WHICH OPIC WOULD OBTAIN SUBROGATION RIGHTS PERMITTING IT TO GUARANTEE PRIVATE INVESTMENTS IN CHILE. AT THIS LATE STAGE, I UNDERSTAND THERE IS A POSSIBILITY OF DELAY IN OBTAINING FINAL APPROVAL. THIS TELEGRAM ARGUES FOR FOLLOWING THROUGH, UNLESS OR UNTIL USG TAKES DECISION TO DISCOURAGE PRIVATE INVESTMENT IN CHILE BECAUSE OF DISTASTE FOR ITS HUMAN RIGHTS ABUSES. END SUMMARY.

2. SUBROGATION AND ARBITRATION. SINCE 1960, WE HAVE BEEN TRYING TO OBTAIN GOC AGREEMENT THAT THE USG, AS AN INSURER, IS ENTITLED TO SUCCEED TO THE RIGHTS OF AN INSURED PRIVATE INVESTOR, AND THAT DISPUTES WITH RESPECT TO INVESTMENT AGREEMENTS AND RELATED QUESTIONS OF PUBLIC INTERNATIONAL LAW NOT SETTLED BY NEGOTIATION SHOULD BE SUBMITTED TO IMPARTIAL AND BINDING ARBITRATION.

3. GOC HAS GONE TO GREAT LENGTHS TO SET STAGE FOR AN OPIC AGREEMENT WHICH WOULD ENCOURAGE US INVESTMENT IN CHILE. OUR  
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RECORDS INDICATE THAT WHEN CURRENT REGIME TOOK OVER IN 1973,

CHILEANS MOVED QUICKLY TO DISPOSE OF UNRESOLVED US CLAIMS GROWING OUT OF PRIOR INVESTMENT DISPUTES. ON OUR SIDE, USG BEGAN TO ACCEPT REGISTRATIONS FROM AMERICAN COMPANIES FOR OPIC INSURANCE FOR NEW INVESTMENTS, SUBJECT TO CONCLUSION OF SUITABLE AGREEMENTS FOR PROTECTING USG INTERESTS IN THE EVENT OF CLAIMS BY INVESTORS. WE HAVE NOW ACCEPTED ABOUT 20 SUCH REGISTRATIONS FROM US COMPANIES.

4. ABOUT MAY 1975, OPIC ADVISED THE GOC THAT IN ORDER TO FACILITATE SUCH INVESTMENTS, IT WAS IMPORTANT THAT PROGRESS BE MADE ON A SUBROGATION AGREEMENT PERMITTING OPIC TO ASSUME RIGHTS AS AN INSURER, IN THE EVENT IT WAS REQUIRED TO REIMBURSE INVESTORS. THE CHILEANS HAD SUBSTANTIAL OBJECTIONS TO THIS PROCEDURE, BUT BY AUGUST 1975 WE HAD INDUCED THEM TO NEGOTIATE IN WASHINGTON AND NEW YORK. THE ACTUAL NEGOTIATIONS HAVE BEEN CONDUCTED BY REPRESENTATIVES OF OPIC AND BY CORFO NEW YORK REP UNDURRAGA. BY DECEMBER 1975 THE PARTIES HAD AGREED AD REFERENDUM ON A SUBROGATION AGREEMENT AND HAD BEGUN NEGOTIATING PRECISE DETAILS.

5. WHILE THE PROPOSED AGREEMENT NECESSARILY DISTINGUISHES BETWEEN THE USG AND OPIC, ITS TEXT IS FULLY CONSISTENT WITH A PRINCIPLE OF INTERNATIONAL LAW WE HAVE LONG ESPOUSED: THAT THE INVESTORS' PARENT GOVERNMENT HAS THE RIGHT TO INTERVENE WITH THE HOST GOVERNMENT WHEN TREATMENT OF THE INVESTOR HAS NOT CONFORMED TO THE NORMS OF INTERNATIONAL LAW. THE TIDE IN THE THIRD WORLD HAS BEEN RUNNING IN THE OPPOSITE DIRECTION. THIS AGREEMENT MAY REPRESENT A SMALL BUT USEFUL COUNTERCURRENT.

6. WE BELIEVE THAT WHEN IT IS CONCLUDED, THIS DRAFT AGREEMENT WILL REPRESENT A BREAKTHROUGH OF SIGNIFICANCE IN THE ANDEAN REGION, IN THAT IT ACHIEVES THE SUBSTANCE OF A LONG-STANDING US OBJECTIVE, WHILE AT THE SAME TIME ACCOMMODATING NATIONAL SENSITIVITIES AND THE CONSTRAINTS OF THE ANDEAN PACT. FURTHER, AFTER YEARS OF CHILEAN RESISTANCE TO THE US POINT OF VIEW, THE GOC IN ITS OWN INTEREST NOW WISHES TO MOVE AHEAD. THIS IS AN OPPORTUNITY WHICH MAY NOT REMAIN OPEN AND WHICH MAY NOT RECUR.

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7. APPLICABILITY OF CONGRESSIONAL LIMITATIONS. AS WE UNDERSTAND IT, CONGRESS HAS NOT SPECIFICALLY ADDRESSED THE SUBJECT OF US PRIVATE INVESTMENT IN CHILE. WE WILL BE INTERESTED TO LEARN WHETHER THE EXECUTIVE BRANCH CONSIDERS DIRECT OPIC LENDING REPEAT LENDING TO FALL WITHIN THE RESTRICTIONS OF THE CURRENT FOREIGN ASSISTANCE ACT. HOWEVER THIS MAY BE, WE WOULD ASSUME THAT CONGRESS WAS NOT, THROUGH THE RESTRICTIONS IN THIS LEGISLATION, ATTEMPTING TO DISCOURAGE PRIVATE FOREIGN

INVESTMENT IN CHILE. OPIC INSURANCE ARRANGEMENTS, AS OPPOSED TO OPIC LENDING, SEEM TO US TO CONSTITUTE ASSISTANCE TO AMERICAN PRIVATE INVESTORS, AND NOT IN ANY DIRECT SENSE ECONOMIC ASSISTANCE TO THE GOC.

8. INDEED, IF AS WE BELIEVE TO BE THE CASE, CONGRESS HAS SPECIFICALLY REFRAINED FROM CUTTING OFF HUMANITARIAN ASSISTANCE TO THE CHILEAN PEOPLE, WE WOULD POINT OUT THAT PRIVATE CAPITAL FLOWS CERTAINLY PLAY A PART IN THIS REGARD. THEY STIMULATE DIRECT AND INDIRECT EMPLOYMENT, AND RAISE NATIONAL INCOME. THROUGH OPIC INSURANCE, IN SHORT, WE CAN CONTINUE TO ASSOCIATE OURSELVES WITH THE LONGER-TERM DEVELOPMENTAL ASPIRATIONS OF THE CHILEAN PEOPLE WHILE RESPECTING CONGRESSIONAL RESTRAINTS ON DIRECT USG FINANCIAL ASSISTANCE TO THE PRESENT REGIME. IT SHOULD BE REMEMBERED THAT THE INVESTMENTS OF WHICH WE ARE SPEAKING WOULD TYPICALLY NOT COME ON STREAM FOR A NUMBER OF YEARS -- BY WHICH TIME THE SITUATION MIGHT HAVE CHANGED. AT THAT STAGE IT WOULD BE POLITICALLY DESIRABLE TO GET THE CREDIT FOR STEADFAST ASSISTANCE TO CHILEAN ECONOMIC DEVELOPMENT OR, CONVERSELY, TO AVOID CRITICISM FOR HAVING DISCOURAGED IT.

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FM AMEMBASSY SANTIAGO  
TO SECSTATE WASHDC 6681

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9. IMPORTANCE OF COPPER. CONCERNED WASHINGTON AGENCIES ARE AWARE OF THE ROLE PLAYED BY CHILEAN COPPER IN DETERMINING WORLD SUPPLY AND WORLD PRICES OF THIS COMMODITY. AS DEMAND

BEGINS AGAIN TO INCREASE, WORLD COPPER SUPPLY MUST ALSO INCREASE, OR WE WILL SEE ANOTHER PERIOD OF RAPIDLY ESCALATING WORLD PRICES. HENCE, ORDERLY INVESTMENT IN CHILEAN COPPER IS A US NATIONAL AS WELL AS A US COMMERCIAL INTEREST. IN A TIME OF A WORLDWIDE SHORTAGE OF CAPITAL, INSURANCE WHICH DIMINISHES THE RISK FACTOR HELPS TO LOWER THE COST AND INCREASE THE AVAILABILITY OF NEEDED FUNDS. AMOCO, AMONG POTENTIAL INVESTORS, HAS ALREADY APPLIED FOR OPIC INSURANCE, AND WE EXPECT THAT OTHERS WILL FOLLOW WHEN THIS FACILITY BECOMES AVAILABLE. BECAUSE OF THE LONG LEAD TIME FOR OPENING UP NEW MINES, ACTION NOW IS DESIRABLE.

10. CONSEQUENCES OF A TURNABOUT. AS INDICATED ABOVE, WE HAVE MOVED VERY FAR DOWN THE PATH TOWARD A GOC-OPC AGREEMENT ON SUBROGATION. BASED AT LEAST PARTLY ON THIS PROGRESS, OPIC RECENTLY SENT A SENIOR OFFICIAL TO SANTIAGO TO PROPOSE A SERIES OF INVESTMENT SEMINARS INVOLVING CHILEAN INDUSTRIALISTS. THIS PROPOSAL WAS GLADLY ACCEPTED BY THE GOC, WHICH IN TURN IS SENDING A SENIOR OFFICIAL TO WASHINGTON TO COMPLETE ARRANGEMENTS. A REVERSAL OF OUR APPROACH AT THIS TIME WOULD BE HIGHLY UNFORTUNATE.

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11. HAVING SUFFERED ONE RECENT REBUFF AFTER ANOTHER FROM THE US, CHILEANS ARE BECOMING INCREASINGLY BITTER AND EVEN PARANOID IN THEIR REACTION. I FULLY APPRECIATE THE NEED TO APPLY PRESSURES OF VARIOUS TYPES TO THE JUNTA TO EMPHASIZE OUR CONCERN OVER THE CONTINUING HUMAN RIGHTS ABUSES WHICH OCCUR HERE. BUT THE REASONS INDICATED ABOVE, IT SEEMS TO ME DESIRABLE TO EXERCISE A CERTAIN DISCRIMINATION IN THE STEPS WE TAKE AND THE STEPS WE AVOID IN REORINETING OUR RELATIONS WITH THE REGIME. IF THE CHILEANS SHOULD NOW SEE US REVERSING COURSE AND REFUSING TO CONCLUDE AN OPIC BILATERAL AGREEMENT WITH CHILE WHILE SUCH PROGRAMS FLOURISH IN OTHER COUNTRIES WITH DEFICIENT HUMAN RIGHTS RECORDS, IT WILL NOT HELP US TO PERSUADE THE CHILEANS TO HELP THEMSELVES OUT OF THEIR PRESENT PREDICAMENT. IN OTHER WORDS, THE ECONOMIC AND MILITARY CONSTRAINTS WE ARE ALREADY APPLYING AGAINST CHILE WILL BE FELT INCREASINGLY OVER TIME: OVERKILL IS NOT NOW CALLED FOR.

12. ACCORDINGLY, I HOPE WE MAY RECEIVE ASSURANCES THAT THE FINISHING TOUCHES WILL BE PUT UPON THE DRAFT BILATERAL AGREEMENT, SO THAT INVESTORS DESIROUS OF DOING SO MAY RECEIVE THE USG INSURANCE SUPPORT TO WHICH THEY WOULD NORMALLY BE ENTITLED.

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